

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**REFUGIO PEREZ,**

**Defendant.**

)  
)  
)  
)  
)  
)  
)  
)  
)

**Case No. 8:09CR252**

**ORDER**

This case is before the court on the defendant Refugio Perez's Motion to Dismiss (#29). The defendant moves the court for an order of dismissal on the grounds that Count III of the superseding indictment, possession of a firearm during a drug trafficking crime, alleges both possession of a firearm and that the firearm was equipped with a silencer. Specifically, the defendant alleges that the indictment is duplicitous as it joins two or more distinct crimes in a single count, which will allow a jury to find the defendant guilty without ever having reached a unanimous verdict as to the commission of each particular offense. After a conference with counsel for the government and defendant, I find the motion should be granted.

**IT IS ORDERED:**

1. Count III of the July 22, 2009 superseding indictment is dismissed without prejudice as it is duplicitous and, therefore, defective.
2. The Clerk of the Court is ordered to remove Count III from the July 22, 2009 superseding indictment.
3. Pursuant to NECrimR 57.2, a party may appeal this order by filing a "Statement of Appeal of Magistrate Judge's Order" within ten (10) business days after being served

with the order. The party shall specifically state the order or portion thereof appealed from and the basis of the appeal. The appealing party shall file contemporaneously with the statement of appeal a brief setting forth the party's arguments that the magistrate judge's order ***is clearly erroneous or contrary to law***. The filing of a statement of appeal does not automatically stay the magistrate judge's order pending appeal. See NECrimR 57.2.

Dated this 19<sup>th</sup> day of October 2009.

BY THE COURT:

S/ F. A. Gossett  
United States Magistrate Judge